

January 1999

Re: NEPA Technical Inquiry 0448 - Lease Acquisition in a Floodplain

This letter is in response to your January 11, 1999 request for guidance on a proposed action in your region to lease the fifth floor of an office building within a 100-year floodplain. Specifically, you would like to know if General Services Administration (GSA) policy allows leasing the fifth floor of an office building that has a finished floor elevation of 29.2 if the 100-year floodplain is at an elevation of 31.5.

SUMMARY OF FINDINGS

NEPA Call-In determined that since the building is within the 100-year floodplain, the fact that the proposed leased space is elevated from the floodplain does not remove the property, shared common areas, or other areas from the floodplain. If this alternative is determined to be the only practicable alternative, GSA may lease the space, but must first work through the Federal Emergency Management Agency (FEMA) 8-step process to ensure your proposed action is in compliance with Executive Order (EO) 11988, 'Floodplain Management.' Our detailed findings are provided below.

DETAILED FINDINGS

NEPA Call-In reviewed EO 11988, "Floodplain Management," which directs Federal agencies to "avoid direct or indirect support of floodplain development wherever there is a practicable alternative." It further states,

"When property in floodplains is proposed for lease, easement, right-of-way, or disposal to non-Federal public or private parties, the Federal agency shall (1) reference in the conveyance those uses that are restricted under identified Federal, State or local floodplain regulations; and (2) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successors, except where prohibited by law; or (3) withhold such properties from conveyance."

NEPA Call-In then reviewed GSA ADM Order 1095.2 "Consideration of flood plains and wetlands in decisionmaking." This order provides guidance on implementing EO 11988. The intent of Order ADM 1095.2 is "to prevent to the extent possible the long- and short-term adverse impacts associated with the occupancy, destruction, or modification of floodplains and wetlands and to avoid direct and indirect support of flood plain development and new construction in wetlands wherever there is a practicable alternative. The order defines 'practicable alternative' as

"...Alternatives which (a) meet justified program requirements, (b) are within the legal authority of GSA or its client agency, (c) meet technological standards, (d) are demonstrated as being cost effective, and (e) do not result in unreasonable adverse environmental impacts."

The order further states where the only practicable alternative is to site in a floodplain, specific actions must be taken to comply with EO 11988. These actions do not constitute a waiver from compliance with EO 11988, but are a step-by-step process to be followed by the appropriate administrators.

Therefore, you must determine if your proposed action is the only practicable alternative. If the action is the only practicable alternative you must complete the FEMA 8-step process that is outlined in the

NEPA Call-In factsheet titled, "When Siting in a Floodplain is the Only Practicable Alternative." You stated that you already have a copy of this factsheet.

The materials in this TI have been prepared for use by GSA employees and contractors and are made available at this site only to permit the general public to learn more about NEPA. The information is not intended to constitute legal advice or substitute for obtaining legal advice from an attorney licensed in your state and may or may not reflect the most current legal developments. Readers should also be aware that this response is based upon laws, regulations, and policies in place at the time it was prepared and that this response will not be updated to reflect changes to those laws, regulations and policies.

Sincerely,

(original signed)

NEPA Call-In Researcher